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| 09/902,845 | 07/11/2001 | | James P. Beck | PH-7222 | 9511 |
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| Michael L Go | oldman | | EXAMINĖR | | |
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| P O Box 31051 | | | | ART UNIT | PAPER NUMBER |
| Rochester, NY 14603 | | | | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 07-01)

| Office Action Summary Examiner | | • | Application No. | ipplicant(s) | | | | |
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| Binta M. Robinson 1925 | | | 09/902,845 | BECK ET AL. | | | | |
| The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Enteriors of time may be available under the provense of 3 CFR 1.136(s). In or event, however, may a reply be limitely filed Enteriors of time may be sealable under the provisors of 3 CFR 1.136(s). In or event, however, may a reply be limitely filed If the period for reply specified above is less than thirty (00) days, as reply with the statutory replicately apply and will explicit SQL (MONTHS from the maining date of this communication. Falsule to reply within the sect or extended period for reply with by statutory period vallage year and value from the section of the provision of the communication. Falsule to reply within the sect or extended period for reply with by statutory period vallage year and value from the section of the communication. Falsule to reply within the sect or extended period for reply with by statutory period vallage year and value from the section of the communication. Falsule to reply within the sect or extended period for reply with by statutory period vallage year and value from the section of the communication. Falsule to reply within the sect or extended period for reply with by statutory replication to the section of the section | | Office Action Summary | Examiner | Art Unit | | | | |
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| A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Extensive of imm may be available under the provinces of 3° CFR 1.75(a). In no event, however, may a reply be timely filed if the pand for reply specified above is listed than thirty (39) days, a reply within the statutory minimum of thirty (30) days, will be considered simely. If the pand for reply specified above is filed status that the status period of the pand of the reply will, by status, cause the application to become APA-MONED (81 U.S. § 133). Fallers to reply within the set or extended pended for lephy will, by status, cause the application to become APA-MONED (81 U.S. § 133). Similar than adjustment. Set 3° CFR 1.74(a). Status 1) Responsive to communication(s) filed on | The MAILING DATE of this communication appears on the cover sheet with the correspondence address | | | | | | | |
| THE MAILING DATE OF THIS COMMUNICATION. Extensions of time may be available under the provisions of 3° CFR 1.13(6). In no event, however, may a ripsy be limity filed after SIX (8) MCNTHS from the mailing date of this communication. Failure to ripsy (is pacified above, the maximus relation) provide subject and the station of the provided provided to the provided provi | • • | | | | | | | |
| 1) Responsive to communication(s) filed on 2a) This action is FINAL. 2b) This action is non-final. 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) is/are pending in the application. 4a) Of the above claim(s) is/are withdrawn from consideration. 5) Claim(s) is/are allowed. 6) Claim(s) is/are objected to. 8) Claim(s) is/are objected to. 8) Claim(s) is/are objected to striction and/or election requirement. Application Papers 9) The specification is objected to by the Examiner. 10) The drawing(s) filed on is/are: a) caccepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). 11) The proposed drawing correction filed on is: a) opproved b) disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action. 12) The oath or declaration is objected to by the Examiner. Priority under 35 U.S.C. §§ 119 and 120 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some One of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No 3. Copies of the certified copies of the priority documents have been received in Application No 3. Copies of the certified copies of the priority documents have been received in Application No 3. Copies of the certified copies of the priority documents have been received in Application No 40) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 119(e) (to a provisional application). a) The translation of the foreign language provisional application has been received. 15) Acknowledgment is made of a claim for domestic priority under 35 | THE MAILING DATE OF THIS COMMUNICATION. Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). | | | | | | | |
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Application/Control Number: 09/902,845

Art Unit: 1625

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-40, drawn to the compound of Formula IA, IB, IIA, IIB, IIIA or IIIB where X = O, R8 +R9 or R10 and R11 = piperidine, a method of treating, classified in class 546, subclass 92.
- II. Claims 1-40, drawn to the compound of Formula IA, IB, IIA, IIB, IIIA or IIIB, a method of treating where X= NR13 where R13 is as claimed, R8+R9 or R10+R11=N-methyl piperazine, classified in class 544, subclass 361.
- III. Claims 1-40, drawn to the compound of of Formula IA, IB, IIA, IIB, IIIA or IIIB, a method of treating where X=S and R8+R9 or R10+R11 equal morpholine or thiomorpholine, classified in class 544, subclass 408.
- IV. Claims 1-40, drawn to the compound of of Formula IA, IB, IIA, IIB, IIIA or IIIB, a method of treating where X = S, R8+R9 or R10+R11 is pyrrolidine, classified in class 546, subclass 80.
- V. Claims 1-40, drawn to the compound of Formula IA, IB, IIA, IIB, IIIA or IIIB, a method of treating where X is O, R8+R9 or R10 +R11 is piperaine, classified in class 546, subclass 92.
- VI. Claims 1-40, drawn to drawn to the compound of Formula IA, IB, IIA, IIB, IIIA or IIIB, a method of treating where X is O, R8+R9 or R10+R11 is morpholine or thiomorpholine, classified in class 544, subclass 408.

The inventions are distinct, each from the other because of the following reasons:

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In the instant case the different inventions have achieved a separate status in the art, have separate fields that aren't coextensive, and are capable of supporting separate patents. Further, a prior art reference that would anticipate the claims under 35 USC 102(b) would not render obvious the same claim(s) under 35 U. S. C. 103 (a) with respect to another member. Searching the entire genus would be a burden on the USPTO in terms of time and expense.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Claims 1-35, 38-40 are generic to a plurality of disclosed patentably distinct species comprising X, R1-R7. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

A telephone call was made to Peter Dolan on 11/18/02 to request an oral election to the above restriction requirement, but did not result in an election being made.

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Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Binta M. Robinson whose telephone number is (703) 306-5437. The examiner can normally be reached on M-F (9:30-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alan Rotman can be reached on (703)308-4698. The fax phone numbers for the organization where this application or proceeding is assigned are (703)308-7922 for regular communications and (703)308-7922 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0193.

Binta Robinson

November 18, 2002

ALAN L. ROTMAN SUPERVISORY PATENT EXAMINER

Man L. Rotman

TECHNOLOGY CENTER 1600